In the High Court of Judicature for Rajasthan
Jaipur Bench
**
Cr. Misc. Petition No.257/2001
Suresh C. Kaushik ***Versus*** State & (4) Ors.

Date of Order ::: 26/09/07

Hon'ble Mr. Justice Ajay Rastogi

Dr. Prakash C.Jain, for petitioner (accused)
Mr. Arun Sharma, Public Prosecutor for State.
Mr. Rajat Ranjan for Mr. MM Ranjan for respondents-complainant

Instant petition U/s 482 CrPC has been filed assailing order dt.08/02/99 in Cr. Rev. Pet. Nos.2/97 & 3/97 whereby Special Sessions Judge (SC/ST (Prevention of Atrocities Cases), Ajmer, upheld order dt.04/07/97 of Addl. Chief Judl. Magistrate, Nasirabad, rejecting plea raised by petitioner for seeking protection U/s 197, CrPC, and consequently, affirmed order dt.21/07/93 of Magistrate taking cognizance of offences U/s 409 & 120-B, IPC against him.

Respondents (2 to 5)(complainants) filed a complaint against petitioner & Vishnu Prakash Tanwar on 26/10/89 inter-alia alleging that while petitioner was working as Executive Officer, Cantonment Board, Nasirabad on 08/10/89, there were certain waste conservative items like excretory pans & tankers, which in fact were to be dumped at a trenching ground and were not to be re-used, for which there were orders of the authority to destroy all such waste conservative items by trenching them so as to avoid

epidemic in the town; and despite a decision taken in a meeting dt.12/10/89 presided by petitioner as Secretary while discussing Agenda Item No.12, reported that all such waste conservative items including excretory pans & tankers have been trenched, but petitioner in connivance with co-accused Vishnu Tanwar on 08/10/89 sold those excretory pans & tankers on a consideration of Rs.7,000/- paid by Kanhaiya junk-keeper (Kabari) engaged in purchasing waste items; and since such an act of petitioner & Vishnu Tanwar could not have been in discharge of his official duty, there was no requirement to seek prior consent from a competent authority U/s 197, CrPC.

The said complaint was sent to police, on which FIR-73/89 was registered at P.S. Nasirabad and after investigation, negative final report was submitted by it – taking note whereof, especially statements recorded U/s 161 CrPC & other material in the case diary, learned Magistrate took cognizance of offences U/s 409 & 120-B, IPC against petitioner as well as co-accused Vishnu Tanwar vide order dt.21/07/93.

While the case was proceeding for framing of charge, petitioner filed application to re-call the order taking of cognizance on the plea that he is entitled to protection provided in S.197, CrPC, but such application was rejected by learned Magistrate vide order dt.04/07/97 – against which he preferred revision petitions

{No.2/97 assailing order of taking cognizance; & No.3/97 against order rejecting his plea raised U/s 197, CrPC**}** but both of which were dismissed vide order dt. 08/02/1999 and the learned Magistrate was directed to proceed in accordance with law and expedite the trial. Hence this petition for quashing of proceedings and dismissal of complaint on the plea U/s 197, CrPC.

Counsel for petitioner submits that petitioner while working as Executive Officer in Cantonment Board in discharge of his official duties directed his subordinate to dump huge waste conservative items and as per office report, waste conservative items have been dumped in accordance with procedure provided under rules of business and later on, it was revealed that his subordinate (co-accused) sold such waste items to one Kanhaiya Kabari, hence disciplinary action was taken against him; but as regards action of petitioner, it was in discharge of his official duty; and thus the Magistrate was not competent to take cognizance without prior consent of competent authority as provided U/s 197 CrPC; as such taking cognizance against him for offence U/s 409 & 120-B, IPC is bad in law and deserves to be set aside.

According to counsel, it has come during investigation that co-accused Vishnu Tanwar had deposited Rs.7000/- received from Kanhaiya; hence in such circumstances, taking cognizance against him, is otherwise not legally sustainable.

Counsel further submits that there is bar U/s 272 of Cantonment Act, 1924 to take any legal action of prosecuting officers of the Cantonment Board and that being so, the Magistrate was not justified in taking cognizance in view of the Bar provided U/s 272 of the Act.

Both, Counsel for complainant as well as Public Prosecutor supported orders impugned and submit that act of petitioner was clearly in dereliction of duty and was not falling within purview of protection U/s 197, CrPC and that apart, as regards bar U/s 272 of the Act, it has no application in so far as it relates to taking cognizance for offences U/s 409 & 120-B, IPC; and in such circumstances, no error has been committed in rejecting application filed U/s 197 CrPC. In support, Counsel placed reliance upon decisions of this Court in **State of H.P. Vs. M.P.Gupta (2004 R. Cr.C (SC)275)**; **Centre for Public Interest Litigation Vs. Union of India (2005(8) SCC 202) and Rakesh K.Mishra Vs. State of Bihar (2006(1) SCC 557**).

I have considered contentions of Counsel for petitioner & Public Prosecutor associated by Counsel for complainants, with whose assistance, examined material on record. It is settled law that in case of public servants, cognizance of any offence by any court is barred by S.197, CrPC, unless sanction is taken from appropriate authority, if offence alleged committed, was in discharge of official

duty. S.197, CrPC not only specifies persons, whom protection is afforded but specifies conditions & circumstances available having effect in law only if are satisfied.

After taking note of earlier decisions on the scope of S.197, CrPC, Apex Court in **Rakesh K. Mishra Vs. State of Bihar (supra) observed:**

> **"6.** The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if it chooses to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the

protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty: if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while

> acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case."

Apex Court further observed :

> "The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in the discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned".

Thus, it is clear from what has been observed by Apex Court in **Rakesh K. Mishra Vs. State of Bihar** (supra) that offence alleged to have been committed by the accused must have something to do, or must be related in some manner with the discharge of official duty and there must be a reasonable connection between the act and discharge of official duty. Apex Court also observed that if it is prima facie found that act or omission for which accused is charged, has reasonable connection with discharge of official duty, then it must be held to be official, which makes him entitled to protection U/s 197, CrPC.; otherwise it will

not provide protective cover to every act or omission done by a public servant in service.

In the facts of instant case, no doubt, petitioner was a public servant and there has been statutory requirement of waste conservative articles to be dumped at a trenching ground but as is evident from complaint, waste conservative items like excretory pans & tankers despite decision taken in the meeting dt.12/10/89, presided by petitioner as Secretary and in course of discussion on agenda item No.19, he informed that those waste conservative articles were dumped whereas the fact was that instead of dumping, such wasteful excretory pans & tankers were sold by the accused to Kanhaiya (Kabari) on a consideration of Rs.7,000/- at his residence – in support whereof, Kanhaiya (Kabari) filed affidavit, which disclosed the fact that all such wasteful excretory pans & tankers were lying at the house of petitioner, in whose presence, after negotiations, those were sold to him on a consideration of Rs.7,000/-. Without expressing any opinion on merits but there is prima facie material available on record before the Magistrate while taking cognizance of offence U/s 409 & 120-B, IPC and rejecting plea raised U/s 197, CrPC that act of petitioner allegedly of commission of offence cannot be said to be in discharge of his official duty or having any connection thereto whereas in fact his act was in dereliction of duty and this Court does not find any error

in the orders impugned while holding the petitioner being dis-entitled to protection U/s 197, CrPC, which does not call for interference.

As regards money deposited by co-accused, that will not in any manner absolve the petitioner from commission of offence alleged against him and certainly what has been contended by petitioner can at best be his defence in course of trial and cannot be considered at this stage.

As regards protection provided U/s 272 of the Act, it has no application in facts of instant case and suffice is to say that any offence committed under the Act prosecution thereto is protected under S.272 of the Act and so far as nature of offence committed in the facts of instant case is concerned, it has no application.

Consequently, misc. petition fails and and is hereby dismissed alongwith stay petition No.195/01. Record be sent back to the Addl.Chief Judl. Magistrate, Nasirabad, forthwith to proceed in accordance with law and expedite the trial.

(**Ajay Rastogi), J.**